

Adopt Rev 3101-3102, cited and to read as follows:**CHAPTER Rev 3100 GAMBLING TAX****PART Rev 3101 DEFINITIONS**

Rev 3101.01 “Games of chance” mean bingo, beano, keno, raffles, lotteries, pull-tabs, scratch-offs, pari-mutuel betting, poker tournaments, Calcutta, wagering, pickle jars, punchboards, slot machines, tip boards, tip jars, horse races, dog races, jai alai, and other wagering transactions, subject to federal income tax withholding under Internal Revenue Code §§ 3402(q) or 3406.

Rev 3101.02 “Gambling winnings” means the proceeds, in money or the fair market value of property received during the calendar year, either in the form of lump sum payments or annuity payments, from gambling winnings as defined by RSA 77:38, III, which includes games of chance or any other winnings subject to federal income tax withholding, excluding amounts received prior to July 1, 2009.

Rev 3101.03 “Internal Revenue Code (IRC)” means the United States Internal Revenue Code in effect as of July 1, 2009.

Rev 3101.04 “Payer” means an individual, entity, or agency conducting a game of chance from which gambling winnings are paid.

Rev 3101.05 “Resident” means resident of this state as defined by RSA 21:6 and shall include bodies corporate and politic as well as individuals.

Rev 3101.06 “Taxpayer” means a New Hampshire resident receiving gambling winnings from any payer or a non-New Hampshire resident receiving gambling winnings from a New Hampshire payer.

PART Rev 3102 COMPUTATION OF GAMBLING WINNINGS**Rev 3102.01 General Rule for Computation of Gambling Winnings.**

(a) If the taxpayer received a Form W-2G or a Form 1042-S, then for purposes of determining the amount of money or the fair market value of gambling winnings, not including gambling winnings received from bingo, keno or slot machines:

(1) The taxpayer shall use the amount indicated in Box 1, entitled “Gross winnings”, of the Form W-2G that the taxpayer received; or

(2) If the taxpayer received a Form 1042-S and Box 1 contains income code 28, the taxpayer shall use the amount indicated in Box 10, entitled “Amount paid to recipient.”

(b) If the taxpayer did not receive a Form W-2G or a Form 1042-S, then for the purposes of determining the amount of money or the fair market value of gambling winnings, not including gambling winnings received from bingo, keno or slot machines, the amounts received from a wager shall be determined:

- (1) By reducing the amount received by the amount of the winning wager; and
- (2) By not reducing the winnings received by amounts of losing wagers.

Rev 3102.02 Special Rules For Bingo, Keno and Slot Machines.

(a) For purposes of determining the amount of money or the fair market value of gambling winnings received from a bingo, keno or slot machine game, the taxpayer shall use the amount indicated in Box 1, entitled "Gross winnings", of the Form W-2G that the taxpayer received, or if the taxpayer received a Form 1042-S and Box 1 contains income code 28, the taxpayer shall use the amount indicated in Box 10, entitled "Amount paid to recipient."

(b) If the taxpayer did not receive a Form W-2G or a Form 1042-S, then for purposes of determining the amount of money or the fair market value of gambling winnings received from a bingo, keno or slot machine game:

- (1) In the case of a bingo game or slot machine play, the amount of winnings shall not be reduced by the amount wagered;
- (2) In the case of a keno game, the amount of winnings from one game shall be reduced by the amount wagered in that one game;
- (3) All winnings by the winner from one bingo or keno game shall be aggregated; and,
- (4) Winnings and losses from any other wagering transaction by the winner shall not be taken into account.

Adopt Rev 3103.01 cited and to read as follows:

PART Rev 3103 RETURNS, REPORTING, AND EXTENSIONS

Rev 3103.01 Form DP-300, Gambling Winnings Tax Return. Form DP-300, Revised 2/2010, "Gambling Winnings Tax Return", shall be completed and filed with the department by taxpayers who received gambling winnings in the preceding calendar year.

Adopt Rev 3103.02 to read as follows:

Rev 3103.02 Due Date of Return. The taxpayer shall file the return on or before April 15 following the calendar year in which any gambling winnings are received.

Adopt Rev 3103.03 – Rev 3103.04 cited and to read as follows:

Rev 3103.03 Lottery Commission Reporting.

- (a) The Lottery Commission shall provide taxpayer information to the department in an electronic format.
- (b) Such information shall include the taxpayer's name, address, taxpayer identification number as defined in Rev 2902.02, the amount of gambling winnings paid during the calendar year, whether said winnings are paid in single or multiple installments, and the amount of tax withheld by the Lottery Commission.
- (c) This information shall be transmitted by the Lottery Commission to the department on a monthly basis by the 15th day of the month.

Rev. 3103.04 Lottery Commission Withholding and Transmittal of Tax Withheld.

- (a) The Lottery Commission shall withhold all tax due and payable to the state from any payout of gambling winnings.
- (b) All amounts withheld shall be delivered to the department or deposited with Treasury where applicable on a monthly basis by the 15th day of the month.

Adopt Rev 3103.05 to read as follows:

Rev 3103.05 Extension of Time to File Gambling Winnings Tax Return. Form DP-300-Ext, "Payment Form and Application For Extension of Time to File Gambling Winnings Tax Return," shall be completed and filed with the department by a taxpayer requesting an extension of time to file a return and shall contain the following information:

- (a) The factors beyond the control of the taxpayer that prevent the filing of the return by the due date, including, but not limited to, unavailability of records; death, illness, or unavailability of the taxpayer; along with supporting documentation;
- (b) The taxpayer's name, address, and taxpayer identification number as defined in Rev 2902.02;
- (c) The date the taxpayer will be able to file the return, but in no event shall an extension be granted beyond four months following the due date of the return
- (d) 100% of the tax determined to be due;
- (e) Amount of NH State tax as reported on federal Form W-2G or Form 1042-S; and,
- (f) Balance of tax due.

Adopt Rev 3103.06 – Rev 3103.10 cited and to read as follows:

Rev 3103.06 Filing of DP-300-Ext and Grant or Denial of Extension of Time to File Gambling Winnings Tax Return.

(a) Form DP-300-Ext shall be signed in accordance with Rev 2904.07 and submitted to the department accompanied by a payment of 100% of the balance of tax due on or before the due date of the return to:

New Hampshire Department of Revenue Administration
Document Processing Division
P.O. Box 2035
Concord, NH 03302-2035.

(b) Requests for extensions shall be denied by the commissioner or authorized representative if:

- (1) The information required in Rev 3103.05 is not complete;
- (2) The tax determined to be due has not been paid in full as required in (a) above;
- (3) The request was not timely filed as required in (a) above; or
- (4) The factor(s) in Rev 3103.05 (a) above does not support that the delay in filing was beyond the taxpayer's control.

(c) Upon receipt of a letter granting the extension, the taxpayer shall comply with the time limits specified therein.

(d) The commissioner or authorized representative shall terminate an extension if the payment received with the extension was returned by the financial institution.

Rev 3103.07 Payments of Liabilities.

(a) When a taxpayer has a payment due with any document, and a payer has not withheld the tax, or has not withheld a sufficient amount to fully satisfy the tax liability due the State of New Hampshire, such payment shall be filed with the document unless the tax liability is under one dollar.

(b) Taxpayers may make payments using any of the following methods:

- (1) Check or money order made payable to the state of New Hampshire; or
- (2) Cash.

Rev 3103.08 Overpayment of Tax.

(a) An overpayment of tax, verified by the department, pursuant to RSA 77:47, shall be treated in the following sequence:

(1) Applied to offset any other state of New Hampshire tax liability of the taxpayer in RSA 21-J:28-a, IV; or

(2) Refunded to the taxpayer.

(b) The department shall notify the taxpayer in the event of any such offset in tax.

Rev 3103.09 Uniform Document Filing Information.

(a) Returns and payment forms shall be considered timely filed when postmarked by the United States Postal Service on or before the due date, or if the due date falls on a Saturday, Sunday or legal holiday, the next business day.

(b) The date indicated on a postmark affixed by a postage meter operated by the taxpayer or someone other than the United States Postal Service shall not meet the requirements of RSA 80:55.

(c) Returns filed after the prescribed filing date shall be subject to interest and penalties.

(d) Taxpayers who fail to receive tax forms from the department shall not be relieved of their obligation to prepare and file a timely return, declaration, or extension request.

(e) Forms may be obtained by contacting the department by:

(1) Accessing the department's web site at <http://www.nh.gov/revenue>;

(2) Telephoning the Forms Line at (603) 271-2192; or

(3) Writing to:

New Hampshire Department of Revenue Administration
Document Processing Division
P.O. Box 2035
Concord, NH 03302-2035.

Rev 3103.10 Amended Tax Returns and Claims For Refund.

(a) Any taxpayer amending an original gambling winnings tax return or claiming a refund of taxes previously paid shall:

(1) File Form DP-300, gambling winnings tax return, for the particular tax year; and

(2) Check off the box entitled "Amended Return".

(b) Pursuant to RSA 21-J:29, claims for a refund or amended gambling winnings tax returns, other than those filed on constitutional grounds, shall be filed:

(1) Within 3 years of the original due date of the tax; or

(2) Within 2 years from the date the tax was paid, whichever is later.

(c) The 2-year provision in (b)(2), above, shall not apply if the payment was the result of an assessment or demand for payment initiated by the department.

(d) Claims for a refund or amended returns that are filed based on a claim that the statute is unconstitutional shall be filed, pursuant to RSA 21-J:29, within 120 days of the due date of the tax and not the due date of the return.

Adopt Rev 3104 and Rev 3105 cited and to read as follows:

PART Rev 3104 INTEREST AND PENALTIES

Rev 3104.01 Interest. Any taxpayer who fails to make payment with a return when due shall be subject to interest computed as provided in RSA 21-J:28.

Rev 3104.02 Penalties.

(a) All penalties contained in RSA 21-J shall apply as enacted to this tax.

(b) Notwithstanding subsection (a) if a return is not filed when due and the failure to file a return when due is not a violation of any provision of RSA 21-J:39, then neither the \$10 nor the \$50 alternate penalties of RSA 21-J:31 shall be applied to the return, pursuant to RSA 77:48.

PART Rev 3105 ADMINISTRATION

Rev 3105.01 Taxpayer Records and Information. Every taxpayer liable for the gambling tax shall maintain for a period of at least 3 years, or until any litigation or prosecution is finally determined, all records and information necessary to establish the amount, location, and date of gambling winnings received. A properly issued Federal Form W-2G shall be considered sufficient record. Every taxpayer liable for the gambling tax shall make such records available for inspection by the commissioner or authorized agents, upon demand, at reasonable times during regular business hours.

Rev 3105.02 Confidentiality of Department Records.

(a) All returns, documents and information shall be confidential and shall only be disclosed in conformity with the provisions of RSA 77:45 and Rev 2903.02.

(b) The department shall only make a disclosure or allow a representative to act on behalf of the taxpayer if:

(1) A properly executed power of attorney form is on file with the department;

(2) The taxpayer authorizes the specific disclosure or actions to be performed by the representative in a letter to the department; or

(3) An authorized employee of the taxpayer is physically present when such disclosure or action is occurring.

(c) The department shall permit a properly authorized representative of the federal Internal Revenue Service to inspect the returns if reciprocal inspection of New Hampshire returns in that service is permitted to the commissioner or the commissioner's representative.

APPENDIX

RULE	STATUTE
Rev 3101	RSA 21-J:1, II(a); RSA 77:38
Rev 3102	RSA 21-J:1, II(a); RSA 77:38; RSA 77:39; RSA 77:40; RSA 77:41
Rev 3103	RSA 77:42; RSA 77:43
Rev 3104	RSA 21-J:1, II(a); RSA 77:44; RSA 77:48
Rev 3105	RSA 21-J:1, II(a); RSA 77:49; RSA 77:45